

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

May 3, 1996

Janet Kalland, City Clerk
City of Santa Maria
110 East Cook Street, Room 3
Santa Maria, CA 93454-5190

Re: Your Request for Informal Assistance
Our File No. I-96-78

Dear Ms. Kalland:

This is in response to your request for advice under the conflict-of-interest disclosure provisions of the Political Reform Act (the "Act").^{1/} Since you are merely seeking clarification of your role as the filing officer for the City of Santa Maria, we are treating your letter as a request for informal assistance.^{2/} This letter will also serve to confirm our telephone conversation of March 27, 1996.

QUESTIONS

1. Is it your responsibility to determine which individuals under contract with the City of Santa Maria are "consultants" subject to the disclosure and disqualification provisions of the Act?

2. How does one determine which individuals are "consultants"?

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations, Sections 18000-18954. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

CONCLUSIONS

1. No. It is not your responsibility as a filing officer to determine which individuals under contract with the City are "consultants" under the Act.

2. Commission Regulation 18700 provides guidance in determining when an individual is a "consultant" as that term is used in the Act. (Copy enclosed.)

FACTS

You are the city clerk for the City of Santa Maria (the "City"). As the city clerk, you are also the filing officer who supplies forms and manuals to, and receives completed disclosure statements from, designated employees of the City. You are asking if it is your responsibility to know which consultants to the City are required to complete the financial disclosure forms. You are concerned that since a department may contract with an individual without your knowledge, this may be a difficult task for you.

You are also asking how to determine when an individual under contract with the City is subject to the "consultant" provisions of the Act. You provided a few examples of individuals which are retained by the City and have asked for guidance in determining if they are the type intended to be covered by the Act.

ANALYSIS

The Act provides that no public official^{3/} at any level of state or local government shall make, participate in making or in any way attempt to use his or her official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. (Section 87100.) Additionally, public officials must make public disclosure of their financial interests. (Section 81002(c).)

Many public officials, such as council members, boards of supervisors, and planning commissioners, disclose their financial interests in accordance with the direct application of the Act. (Section 87200.) Other public officials, such as employees or consultants of a state or local government agency, disclose their financial interests in accordance with the conflict of interest

^{3/} The term "public official" means every member, officer, employee or consultant of a state or local government agency. (Section 82048, emphasis added.)

code^{4/} developed by their respective agency. (Section 87000 and 87302.)

The City of Santa Maria has such a conflict of interest code. As requested, you provided me with a copy for purposes of responding to your letter. The City's code designates employees who make or participate in the making of decisions and also designates consultants.

When a public official completes his or her statement of economic interests, that statement is filed with the official's respective filing officer. For designated employees and consultants for the City of Santa Maria, you, as the city clerk, are the City's filing officer.

In that role, you are delegated certain duties and responsibilities, such as the duty to 1) supply forms and manuals; 2) determine whether the proper statements have been filed; 3) review 20 percent of the statements filed; and 4) report apparent violations to the appropriate agency. (Regulation 18115.)

As the filing officer, it is your responsibility to supply forms to those individuals holding positions which are designated in the City's conflict of interest code. It is not, however, your responsibility to determine which employees of the City must be designated in the code, nor is it your responsibility to determine which individuals meet the definition of "consultant" within the meaning of the Act.

In our March 27, 1996, telephone conversation, you asked if I could provide the definition of a "consultant" and apply that definition to the scenarios which you provided in your letter so that this information could be provided to the city manager.

Essentially, the Commission has defined "consultant" to mean an individual who, pursuant to a contract with a state or local government agency:

- (A) Makes a governmental decision to:
1. Approve a rate, rule, or regulation;
 2. Adopt or enforce a law;

^{4/} A conflict of interest code is a rule or regulation adopted by an agency which designates the positions in the agency which make, participate in the making, or use their official positions to influence governmental decisions. A conflict of interest code will require those designated positions to disclose their investments, interests in real property, sources of income and business positions which the designated employees can materially affect in their decisionmaking. (Section 87000 and 87302.)

3. Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;

4. Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract which requires agency approval;

5. Grant agency approval to a contract which requires agency approval and in which the agency is a party or to the specification for such a contract;

6. Grant agency approval to a plan, design, report, study or similar item;

7. Adopt, or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision thereof; or

(B) Serves in a staff capacity with the agency and in that capacity performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code.

(Regulation 18700(a)(2).)

Regulation 18700(a)(2)(B) above includes any individual who serves in a staff capacity which, although not presently specified in an agency's code, is performing functions which constitute "participation" and should be designated in an agency's code. (Randolph Advice Letter, No. I-95-045, copy enclosed.)

Applying this definition to your scenarios, we offer the following analysis as general, but not definitive, guidance.

1) An individual under contract makes a recommendation to a City staff member. The City staff member then makes the same recommendation to the city council.

Analysis: In certain instances, if there is significant substantive review of the individual's recommendation by staff prior to the recommendation being submitted to the city council, the individual under contract is not a consultant. (Regulation 18700(a)(2)(B) and 18700(c)(2).) This would be true even if after the significant substantive review, the City staff member reaches the same conclusion and makes the same recommendation to the city council. (Regulation 18700(c)(2).) If, on the other hand, the staff member merely forwards the recommendation to the city council, without substantive review, the individual under contract may be a "consultant." (Regulation 18700(c)(2).)

2) The City hires a plan checker to review plans for compliance with code requirements prior to issuing a building permit.

Analysis: If the plan checker is authorized to "approve plans" or "issue or deny permits or approvals," the plan checker is a "consultant." (Regulation 18700(a)(2).) In addition, an employee of the City who serves as a plan checker, or equivalent position, is making decisions on behalf of the City and should be designated in the City's conflict of interest code. Thus, an individual under contract providing the same function, is a "consultant." (Regulation 18700(a)(2)(B).)

3) An individual is hired to develop plans and specifications for a bid. The City uses the plans or specifications to develop a request for bids from third party contractors.

Analysis: If the function of this individual is to develop plans and specifications on an ongoing basis for a number of projects, the individual is performing functions in a staff capacity and is a "consultant." On the other hand, if the development of plans and specifications is limited to a one-time specific project, such individual would not be a "consultant." (Randolph Advice Letter, supra.)

I realize this is only a cursory analysis of the scenarios, but not enough facts were provided to enable us to be more conclusive. If your city manager needs more assistance in this regard, please feel free to contact the Commission at (916) 322-5660.

Not many filing officers will take the initiative that you have to ensure a city's compliance with the consultant disclosure provisions of the Act. You should be commended by your City for your diligence.

Sincerely,

Steven G. Churchwell
General Counsel

By: Jeanette E. Turvill
Political Reform Consultant
Technical Assistance Division

SGC/JET/jt
Enclosures